

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 20, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AMIRA N.,

Plaintiff,

v.

KILOLO KIJAKAZI,
ACTING COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

No. 2:21-CV-00109-JAG

ORDER GRANTING IN PART
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT AND
REMANDING FOR ADDITIONAL
PROCEEDINGS

BEFORE THE COURT are cross-motions for summary judgment. ECF No. 13, 18. Attorney Dana Madsen represents Amira N. (Plaintiff); Special Assistant United States Attorney Nancy Zaragoza represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 7. After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS IN PART** Plaintiff's Motion for Summary Judgment; **DENIES** Defendant's Motion for Summary Judgment; and **REMANDS** the matter to the Commissioner for additional proceedings pursuant to 42 U.S.C. § 405(g).

I. JURISDICTION

Plaintiff filed an application for Supplemental Security Income on February 4, 2019, alleging disability since April 20, 2013¹, due to depression, PTSD, neck,

¹ Plaintiff later amended her alleged onset date to the protected filing date, February 2, 2019. Tr. 36.

1 spine, shoulder, arm, headaches, back, knees, foggy left eye, asthma, allergies,
2 high blood pressure, and unusual menstrual bleeding. Tr. 63-64. The application
3 was denied initially and upon reconsideration. Tr. 96-101, 108-12. Administrative
4 Law Judge (ALJ) Lori Freund held a hearing on August 13, 2020, Tr. 31-62, and
5 issued an unfavorable decision on September 3, 2020. Tr. 15-25. Plaintiff
6 requested review of the ALJ's decision by the Appeals Council and the Appeals
7 Council denied the request for review on January 13, 2021. Tr. 1-5. The ALJ's
8 September 2020 decision is the final decision of the Commissioner, which is
9 appealable to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this
10 action for judicial review on March 8, 2021. ECF No. 1.

11 **II. STATEMENT OF FACTS**

12 Plaintiff was born in 1977 and was 41 years old when she filed her
13 application. Tr. 24. She is a Syrian refugee, having fled the war in 2012, and spent
14 four years in Turkey before resettling in the United States. Tr. 291, 506. She does
15 not speak English and has no formal education in Arabic and cannot read or write.
16 Tr. 507, 574. She had struggled with symptoms of PTSD from exposure to war,
17 including many deaths in her family, and has experienced depression over her
18 daughter's birth defect and subsequent leg amputation. Tr. 307.

19 **III. STANDARD OF REVIEW**

20 The ALJ is responsible for determining credibility, resolving conflicts in
21 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,
22 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with
23 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,
24 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed
25 only if it is not supported by substantial evidence or if it is based on legal error.
26 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is
27 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at
28

1 1098. Put another way, substantial evidence is such relevant evidence as a
 2 reasonable mind might accept as adequate to support a conclusion. *Richardson v.*
 3 *Perales*, 402 U.S. 389, 401 (1971).

4 If the evidence is susceptible to more than one rational interpretation, the
 5 Court may not substitute its judgment for that of the ALJ. *Tackett*, 180 F.3d at
 6 1097; *Morgan v. Commissioner of Social Sec. Admin.*, 169 F.3d 595, 599 (9th Cir.
 7 1999). If substantial evidence supports the administrative findings, or if
 8 conflicting evidence supports a finding of either disability or non-disability, the
 9 ALJ's determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230
 10 (9th Cir. 1987). Nevertheless, a decision supported by substantial evidence will be
 11 set aside if the proper legal standards were not applied in weighing the evidence
 12 and making the decision. *Browner v. Secretary of Health and Human Services*,
 13 839 F.2d 432, 433 (9th Cir. 1988).

14 IV. SEQUENTIAL EVALUATION PROCESS

15 The Commissioner has established a five-step sequential evaluation process
 16 for determining whether a person is disabled. 20 C.F.R. § 416.920(a); *Bowen v.*
 17 *Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the claimant
 18 bears the burden of establishing a prima facie case of disability. *Tackett*, 180 F.3d
 19 at 1098-1099. This burden is met once a claimant establishes that a physical or
 20 mental impairment prevents the claimant from engaging in past relevant work. 20
 21 C.F.R. § 416.920(a)(4). If a claimant cannot perform past relevant work, the ALJ
 22 proceeds to step five, and the burden shifts to the Commissioner to show: (1) the
 23 claimant can make an adjustment to other work; and (2) the claimant can perform
 24 specific jobs that exist in the national economy. *Batson v. Commissioner of Social*
 25 *Sec. Admin.*, 359 F.3d 1190, 1193-1194 (9th Cir. 2004). If a claimant cannot make
 26 an adjustment to other work in the national economy, the claimant will be found
 27 disabled. 20 C.F.R. § 416.920(a)(4)(v).
 28

V. ADMINISTRATIVE FINDINGS

On September 3, 2020, the ALJ issued a decision finding Plaintiff was not disabled as defined in the Social Security Act. Tr. 15-25.

At *step one*, the ALJ found Plaintiff had not engaged in substantial gainful activity since the application date. Tr. 17.

At *step two*, the ALJ determined Plaintiff had the following severe impairments: cervical degenerative disc disease, lumbar degenerative disc disease, obesity, asthma, PTSD, and major depressive disorder. *Id.*

At *step three*, the ALJ found Plaintiff did not have an impairment or combination of impairments that met or medically equaled the severity of one of the listed impairments. Tr. 18-20.

The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and found she could perform light exertional work, with the following additional limitations:

She should never climb ladders, ropes, or scaffolds; occasionally climb ramps and stairs; and occasionally balance, stoop, kneel, crouch, and crawl. She should avoid unprotected heights and hazardous machines as well as avoid concentrated exposure to pulmonary irritants, extreme cold, and heavy industrial vibration. She would be limited to simple and repetitive tasks. She could have occasional changes in a work setting. She should avoid fast paced or timed production work.

Tr. 20.

At *step four*, the ALJ found Plaintiff had no past relevant work. Tr. 24.

At *step five* the ALJ found that, considering Plaintiff's age, education, work experience and residual functional capacity, Plaintiff could perform jobs that existed in significant numbers in the national economy, specifically identifying the representative occupations of laundry sorter, hand packager-inspector, and electronics worker. Tr. 24-25.

1 The ALJ thus concluded Plaintiff was not under a disability within the
2 meaning of the Social Security Act at any time from the date the application was
3 filed through the date of the decision. Tr. 25.

4 VI. ISSUES

5 The question presented is whether substantial evidence supports the ALJ's
6 decision denying benefits and, if so, whether that decision is based on proper legal
7 standards.

8 Plaintiff contends the Commissioner erred by: (1) improperly discrediting
9 Plaintiff's symptom claims; and (2) failing to properly consider and weigh the
10 opinion evidence.

11 VII. DISCUSSION

12 A. Medical Opinion Evidence.

13 Plaintiff argues the ALJ erred in evaluating the medical opinions from
14 consultative examiner Dr. Karen Mansfield-Blair and the medical expert who
15 testified at the hearing, Dr. Jay Towes. ECF No. 13 at 15-17.

16 For claims filed on or after March 27, 2017, the ALJ considers the
17 persuasiveness of each medical opinion and prior administrative medical finding,
18 regardless of whether the medical source is an Acceptable Medical Source. 20
19 C.F.R. § 416.920c(c). The ALJ is required to consider multiple factors, including
20 supportability, consistency, the source's relationship with the claimant, any
21 specialization of the source, and other factors (such as the source's familiarity with
22 other evidence in the file or an understanding of Social Security's disability
23 program). *Id.* The regulations make clear that the supportability and consistency
24 of the opinion are the most important factors, and the ALJ must articulate how they
25 considered those factors in determining the persuasiveness of each medical opinion
26 or prior administrative medical finding. 20 C.F.R. § 416.920c(b). The ALJ may
27 explain how they considered the other factors, but is not required to do so, except
28

1 in cases where two or more opinions are equally well-supported and consistent
2 with the record. *Id.*

3 Supportability and consistency are further explained in the regulations:

4 (1) Supportability. The more relevant the objective medical
5 evidence and supporting explanations presented by a medical
6 source are to support his or her medical opinion(s) or prior
7 administrative medical finding(s), the more persuasive the
8 medical opinions or prior administrative medical finding(s) will
9 be.

10 (2) Consistency. The more consistent a medical opinion(s) or
11 prior administrative medical finding(s) is with the evidence from
12 other medical sources and nonmedical sources in the claim, the
13 more persuasive the medical opinion(s) or prior administrative
14 medical finding(s) will be.

15 20 C.F.R. § 416.920c(c). The Ninth Circuit has additionally held that the new
16 regulatory framework displaces the longstanding Ninth Circuit case law requiring
17 an ALJ to provide “specific and legitimate” or “clear and convincing” reasons for
18 rejecting a treating or examining doctor’s opinion. *Woods v. Kijakazi*, 32 F.4th
19 785 (9th Cir. 2022).

20 Plaintiff attended a consultative psychological exam with Dr. Mansfield-
21 Blair in June 2019. Tr. 506-10. She diagnosed Plaintiff with unspecified
22 depressive disorder and rule out PTSD. Tr. 509. She opined Plaintiff would have
23 difficulty with simple and repetitive tasks, performing tasks on a daily basis
24 without special or added instruction, and maintaining regular attendance and
25 completing a normal workweek without interruption from psychological
26 symptoms. Tr. 510.

27 At the hearing, Dr. Toews testified that that the diagnoses of PTSD and
28 major depressive disorder were present, but that they did not meet or equal a listed
impairment. Tr. 47-49. He testified that he agreed with the limitations noted by

1 Dr. Mansfield-Blair, and that Plaintiff may have a great deal more difficulty than
 2 was indicated by Dr. Mansfield-Blair. Tr. 50. While he believed Plaintiff would
 3 be able to do some type of simple and repetitive job, with patience, he also stated
 4 he agreed she would have difficulty performing on a daily basis without special or
 5 added instruction and that there could be a moderate level of disruption in her
 6 attendance due to her mental conditions. Tr. 50-51. He also stated Plaintiff would
 7 have moderate difficulty dealing with the usual stress in the workplace, and
 8 appeared to agree that Plaintiff would have some absenteeism. Tr. 52.²

9 The ALJ found Dr. Mansfield-Blair's report to be somewhat persuasive,
 10 noting that the mental status exam in the report was mostly within normal limits
 11 and that some limitations on testing were due to Plaintiff's lack of education.
 12 Tr. 22. The ALJ further found Dr. Mansfield-Blair's report to be inconsistent with
 13 the largely benign mental status exams of record. *Id.*

14 The ALJ found Dr. Toews' opinion to be persuasive, finding it to be mostly
 15 consistent with the benign mental status findings and to be consistent with the state
 16

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 18
 19 ² The precise exchange with Plaintiff's representative was as follows:

20 Q: In Dr. Blair's report, she says [Plaintiff] would have
 21 difficulty maintaining regular attendance, precluding a
 22 normal workday and workweek without interruption
 23 from the psychiatric conditions, so would that mean she
 24 would have absenteeism?

25 A: I would agree with that.

26 Tr. 52. Defendant argues Dr. Toews was simply agreeing with Plaintiff's
 27 interpretation of what Dr. Mansfield-Blair's opinion said, and not stating that he
 28 agreed with the assessed limitations. ECF No. 18 at 18. The Court finds this
 interpretation unpersuasive in context of the remainder of the testimony.

1 agency doctors' reports. *Id.* The ALJ further noted Dr. Toews had specialized
2 expertise and program knowledge. *Id.*

3 Plaintiff argues the ALJ erred, as the RFC is only supported by the opinions
4 from the state agency doctors, which do not constitute substantial evidence on their
5 own as they are inconsistent with the other opinion evidence and contrary to all
6 other records. ECF No. 13 at 16. Defendant argues the ALJ reasonably considered
7 the opinion evidence under the revised regulations, and adequately discussed
8 consistency and supportability. ECF No. 18 at 13-15. Defendant further argues
9 Plaintiff mischaracterizes Dr. Toews' testimony as disabling, and asserts the ALJ
10 reasonably translated Dr. Toews' testimony into an adequate RFC. *Id.* at 15-18.

11 The Court finds the ALJ's discussion is not supported by substantial
12 evidence and is internally inconsistent. While the ALJ claimed to find Dr. Toews'
13 testimony to be persuasive, she failed to account for the fact that Dr. Toews said
14 Plaintiff was *more* impaired than Dr. Mansfield-Blair found. The RFC also does
15 not account for Dr. Toews' testimony that Plaintiff would have absenteeism, or
16 include any limitations on additional instruction or having a patient supervisor.
17 While Dr. Toews did not specifically quantify these limitations, it is up to the ALJ
18 to translate medical opinion testimony into a functional RFC. Because the ALJ did
19 not incorporate all of Dr. Toews' testimony and offered no reasons for disregarding
20 portions of it, the ALJ erred.

21
22 On remand, the ALJ shall reconsider the medical opinion evidence and
23 reassess the RFC and remaining steps of the sequential evaluation process.

24 **B. Plaintiff's Subjective Statements.**

25 Plaintiff contends the ALJ erred by improperly rejecting her subjective
26 complaints. ECF No. 13 at 12-15. It is the province of the ALJ to make
27 determinations regarding a claimant's subjective statements. *Andrews v. Shalala*,
28 53 F.3d 1035, 1039 (9th Cir. 1995). The ALJ's findings, however, must be

1 supported by specific, cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231
2 (9th Cir. 1990). Once the claimant produces medical evidence of an underlying
3 medical impairment, the ALJ may not discredit testimony as to the severity of an
4 impairment merely because it is unsupported by medical evidence. *Reddick v.*
5 *Chater*, 157 F.3d 715, 722 (9th Cir. 1998). Absent affirmative evidence of
6 malingering, the ALJ's reasons for rejecting the claimant's testimony must be
7 "specific, clear and convincing." *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir.
8 1996); *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1996). "General findings are
9 insufficient: rather the ALJ must identify what testimony is not credible and what
10 evidence undermines the claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v.*
11 *Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

12 The ALJ concluded Plaintiff's medically determinable impairments could
13 reasonably be expected to cause the alleged symptoms; however, Plaintiff's
14 statements concerning the intensity, persistence and limiting effects of those
15 symptoms were not entirely consistent with the medical evidence and other
16 evidence in the record. Tr. 21. The ALJ found Plaintiff's complaints were
17 unsupported by the objective evidence of record and undermined by evidence of
18 limited mental health treatment, inconsistent evidence throughout the record,
19 Plaintiff's limited work history since leaving Syria, and the lack of any disabling
20 opinions from any medical source. Tr. 21-22.

22 Plaintiff argues the record supports her claims of significant depression and
23 PTSD as a result of her exposure to trauma, and that Dr. Toews and Dr. Mansfield-
24 Blair both assessed significant limitations. ECF No. 13 at 13-14. She further
25 argues the ALJ improperly discredited her based on her minimal daily activities.
26 *Id.* Defendant argues the ALJ reasonably considered evidence of lack of treatment,
27 unsupportive mental status exams, inconsistent statements, and unsupportive
28 medical opinions assessing moderate limits at most. ECF No. 18 at 3-9.

1 Because this claim is being remanded for reconsideration of the medical
2 opinion evidence, on remand the ALJ shall also reconsider Plaintiff's subjective
3 testimony, considering the record as a whole.

4 **VIII. CONCLUSION**

5 Plaintiff argues the ALJ's decision should be reversed and remanded for the
6 payment of benefits. The Court has the discretion to remand the case for additional
7 evidence and findings or to award benefits. *Smolen v. Chater*, 80 F.3d 1273, 1292
8 (9th Cir. 1996). The Court may award benefits if the record is fully developed, and
9 further administrative proceedings would serve no useful purpose. *Id.* Remand is
10 appropriate when additional administrative proceedings could remedy defects.
11 *Rodriguez v. Bowen*, 876 F.2d 759, 763 (9th Cir. 1989). In this case, the Court
12 finds that further development is necessary for a proper determination to be made.
13 Additional administrative proceedings could remedy defects.

14 The ALJ's decision is not supported by substantial evidence. On remand,
15 the ALJ shall reevaluate Plaintiff's subjective statements and the medical evidence
16 of record, making findings on each of the five steps of the sequential evaluation
17 process, and take into consideration any other evidence submitted or arguments
18 relevant to Plaintiff's disability claim. The Court makes no judgment as to the
19 whether the record supports an award of benefits.
20

21 Accordingly, **IT IS ORDERED:**

22 1. Plaintiff's Motion for Summary Judgment, **ECF No. 13**, is
23 **GRANTED IN PART.**

24 2. Defendant's Motion for Summary Judgment, **ECF No. 18**, is
25 **DENIED.**

26 3. The matter is **REMANDED** to the Commissioner for additional
27 proceedings consistent with this Order.

28 4. An application for attorney fees may be filed by separate motion.

1 5. The District Court Executive is directed to file this Order and provide
2 a copy to counsel for Plaintiff and Defendant. Judgment shall be entered for
3 Plaintiff and the file shall be **CLOSED**.

4 **IT IS SO ORDERED.**

5 DATED March 20, 2023.



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JAMES A. GOETKE
UNITED STATES MAGISTRATE JUDGE

The signature of James A. Goetze is written in blue ink above a horizontal line. Below the line, the name "JAMES A. GOETKE" and the title "UNITED STATES MAGISTRATE JUDGE" are printed in black capital letters.